



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Honorable James E. Kilday, Director
Motor Transportation Division
Railroad Commission of Texas
Austin, Texas

Dear Sir:

Opinion No. O-4007

Re: Under the facts set forth, is it mandatory upon the Railroad Commission to grant motion for oral argument on the application by a person to operate motor vehicles for hire over the public highways?

We have your letter of September 18, 1941, wherein you set out the following facts:

"I am directed by the Railroad Commission of Texas to request your opinion on the following question:

"Assuming that one of the Examiners in the Motor Transportation Division of the Railroad Commission of Texas hears an application by a person to operate motor vehicles for hire over the highways of Texas; and assuming that the court reporter transcribes his notes of the evidence adduced at such hearing and delivers such transcript to the Examiner for his utilization in making a report and recommendation to the Commission as to what disposition should be made of the proceedings; and assuming that neither one of the Railroad Commissioners of Texas was present at the hearing and, therefore, did not view the witnesses and did not hear any of them testify; and assuming that, while the record and transcript are with the Examiner prior to the time that he makes his report and recommendation to the Commission as to what disposition should be made of the proceedings; and assuming that, during such time while the record is thus in the hands of the Examiner prior to

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presentation of the case to the Commission, some interested party who appeared at the hearing and participated therein should file a motion with the Railroad Commission praying that such interested party be allowed to argue the case orally before the Commissioners, or a quorum thereof, contending that, unless such oral argument were granted and listened to by the Commission, he, the movant, would forever be deprived of his day before the Commission,--then and in that event and under such circumstances, is it mandatory upon the Commission to grant the motion for oral argument before the Commission?"

From this state of facts you submit to us the following question:

Under the facts set forth, is it mandatory upon the Railroad Commission to grant motion for oral argument on the application by a person to operate motor vehicles for hire over the public highways?

Article 911b, Section 12(a) of the Revised Civil Statutes of Texas, 1925, is as follows:

"The hearing on an application for certificate or permit shall be conducted under such rules and regulations as the Commission may prescribe, and the parties interested, including the Highway Commission of this State, may appear either in person or by counsel and present such evidence and argument as they may desire and as the Commission may deem pertinent, in favor of or against the granting of such application. . . ."

Section 14(a) of Article 911b, as amended by the acts of the 1937 45th Legislature, page 505, chapter 255, section 1 provides as follows:

"The Commission, or any member thereof, or authorized representative or examiner of the commission, shall have power to compel the attendance of witnesses, swear witnesses, take their testimony under oath, make record thereof, and if such

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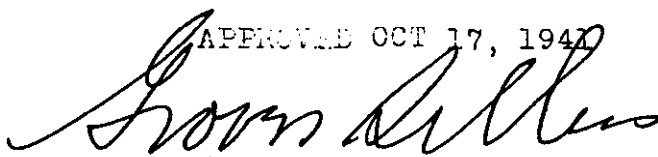
record is made under the direction of a commissioner, or authorized representative or examiner of the commission, a majority of the commission may, upon the record, render judgment as if the case had been had before a majority of the members of the commission."

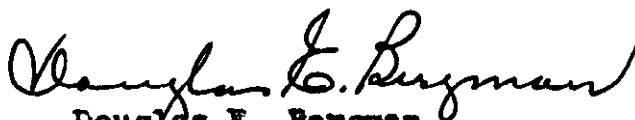
Under the provisions of the above statutes as quoted it is the opinion of this department that the commission has the power to prescribe such rules and regulations with respect to hearings before it or before one of its examiners as it may deem expedient so long as such rules and regulations are reasonable and do not deprive an interested party of his right to fairly present the matter in controversy. As we understand it, under the facts presented in your letter, all of the evidence in the matter was presented before the examiner and petitioner was accorded a full, fair and complete hearing. This being the case, it is our opinion, and you are so advised, that the matter of allowing oral arguments at this stage of the proceedings before the commission or a majority of the members thereof is a question that is addressed to the sound discretion of the commission and the granting of such request is not mandatory. *Rodriguez v. Priest*, 126 S. W. 1187, *McHugh v. Peck*, 29 Tex. 141.

Trusting that this answers your question fully, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED OCT 17, 1947

FIRST ASSISTANT
ATTORNEY GENERAL

By 
Douglas E. Bergman
Assistant

DEB:mp

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